



Department of Justice

STATEMENT

OF

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BUREAU OF ALCOHOL, TOBACCO, FIREARMS, AND EXPLOSIVES**

BEFORE THE

**HOUSE COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND SECURITY
UNITED STATES HOUSE OF REPRESENTATIVES**

CONCERNING

**"OVERSIGHT OF THE BUREAU OF ALCOHOL, TOBACCO,
FIREARMS AND EXPLOSIVES:
REFORMING LICENSING AND ENFORCEMENT AUTHORITIES"**

PRESENTED ON

MARCH 28, 2006

Good morning Chairman Coble, Congressman Scott and members of the Subcommittee. Thank you for the opportunity to appear before you to discuss the significant contributions of the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) relating to our administration of the licensing provisions of the Gun Control Act of 1968.

I appreciate this opportunity to outline for the Subcommittee ATF's regulation of Federal firearms licensees, which I will refer to as "FFLs." I will begin with the application and license issuance process and then address voluntary FFL compliance, which is ATF's primary goal.

All applicants for a license submit an application to ATF's licensing center in Atlanta. The applicant and any corporate officers, directors, or managers are subject to National Instant Check System (NICS) background checks, and assuming none are felons or otherwise fall within a category of prohibited persons, the application is then sent to the ATF field division where the applicant is located. At that point an Industry Operations Investigator (IOI) conducts an interview to verify the identity of the applicant, verify that the applicant has a permanent location that will be available for ATF's statutorily authorized inspections, and to review with the applicant the laws and regulations governing the operation of the applicant's firearms business. This process benefits applicants by providing them with information to assist them in operating their business in compliance with the

law. Once the field is satisfied that the applicant meets all the statutory criteria for licensing, the licensing center is then directed to issue the license. ATF's attempts to complete the licensing process within 60 days, but that time period can be extended when complications arise in connection with criminal background checks or the necessary zoning variances. ATF continues to educate licensees concerning their obligations under the law through the issuance of Open Letters that are mailed to FFLs and posted on the ATF website, through quarterly FFL Newsletters, and by attending industry conferences and trade shows to answer questions from licensees. We also provide FFLs with our Federal Firearms Regulations Reference Guide, which includes the laws, regulations, and other information about conducting a firearms business under Federal law.

With certain exceptions, the Gun Control Act limits ATF to one annual compliance inspection of an FFL's firearms records and inventory each year. There are currently over 105,000 Federal firearms licensees, and ATF conducts approximately 4,000 inspections of firearms licensees each year. The purpose of the inspection program is to determine whether an FFL is complying with the law and regulations and, if not, to obtain voluntary compliance. Voluntary compliance is encouraged by educating FFLs about the requirements of the law and regulations and by issuing Notices of Violation that outline the specific violations of the law and regulations that were discovered during the inspection. IOIs go over the

violations outlined in the notice with the FFLs to make sure they understand how their business operations fell short and how to avoid violations in the future.

In the event the violations are “willful,” the licensee may receive a warning letter from the Field Division or may be asked to attend a warning conference to discuss the violations and how they may be avoided in the future. If the violations are willful and it is determined that voluntary compliance is unlikely or that continued operation of the FFL poses a threat to public safety, the Field Division may recommend that the license be revoked. Under the Gun Control Act, license revocation may be undertaken for any willful violation of the law or regulations. The term “willful” is not defined in the law, but Federal courts have consistently defined it to mean that the FFL knew of the legal requirements at issue and disregarded or was plainly indifferent to these requirements. This interpretation of willfulness is consistent with that applied in administrative proceedings held by a number of other Federal agencies.

ATF has issued guidance to all field divisions outlining the types of violations that are suitable for warning letters, warning conferences, and revocation of licenses. These guidelines were issued to ensure consistency in administering the statute throughout the United States.

A review of agency data indicates that ATF typically revokes fewer than 100 licenses per year on the basis of willful violations of the law and regulations. This

represents 2.5% of all licensees inspected annually and 0.1% of the total FFL population. In the vast majority of these revocations, ATF has already provided the licensee with an opportunity to comply and previously issued Reports of Violation or warning letters, or held warning conferences. Moreover, in almost all cases the Federal district courts have upheld the Government's actions. For example, in the past 5 years, 33 of the 36 Federal district courts reviewing ATF's license denial or revocation decisions have upheld those determinations. Further, only one of the three adverse decisions has resulted in an award of fees and costs against the Government.

Again, our goals are voluntary compliance and educating FFLs about their obligations under the law and encouraging business practices that bring about this result. ATF typically resorts to license revocation only when it is clear that voluntary compliance is unlikely and that continued operation of the firearms business is not in the public interest.

Currently, license revocation hearings are held before ATF hearing officers, and the proceedings are informal, where the Rules of Evidence and other judicial rules do not strictly apply. Because the hearings are informal, FFLs often choose to represent themselves. After the hearing, the Director of Industry Operations, who oversees a Division's regulatory operations, issues a final decision. During the administrative proceedings, the FFL may continue to operate the firearms

business. Thereafter, the FFL can proceed to Federal District Court for review of the revocation or denial decision. Because a firearms license revocation is subject to trial *de novo*, a legal term which means the court can allow new testimony and evidence that was not considered at the administrative hearing, ATF revocation proceedings need not meet the formal adjudication requirements of the Administrative Procedure Act. Thus, ATF's revocation hearings are not required to be held before an Administrative Law Judge and need not follow formal rules of procedure. This makes the proceedings more amenable to unrepresented FFLs, who often choose to proceed without counsel. ATF hearing officers are trained to accommodate unrepresented licensees and make sure that the proceedings give them a meaningful opportunity to participate in the hearing. ATF's legal staff agree that the informal hearing procedures comply with due process and best serve the interests of licensees and the general public.

ATF has discretion under the regulations on whether to allow a licensee to continue to operate while the appeal process is ongoing in Federal court, which may take several years. The standard for allowing continued operation is whether "justice so requires," and ATF implements this provision to allow an FFL to continue operating unless their business practices pose a threat to public safety. For example, when the violations at issue involve significant numbers of

unaccounted for firearms or FFL participation in straw sales, ATF may decide that the FFL should not operate during the appeal process.

Further, new entities lawfully acquiring a firearms business – including a business from a person whose license was revoked for committing willful violations of the law – start their businesses with a clean compliance history. ATF will verify that the persons acquiring the firearms business are not merely fronting for the predecessor, and, providing that successors otherwise meet the statutory requirements, ATF will issue a license to the successor. In the event the new licensee includes responsible persons or hires employees from the previous business owner who were aware of or participated in prior violations, those violations may be the basis for a determination of willfulness if the successor later commits the same violations. ATF is frequently asked for guidance on such transactions and on how to go about liquidating firearms inventories after revocation.

Our enforcement efforts in inspecting FFLs are a valuable tool in protecting our communities. The commodities in which these businesses are dealing in are not ordinary products—they are firearms that can be used in crime as well as for lawful sporting purposes. If ever there was a business where extraordinary diligence is required, it is a firearms business. This principle has been recognized repeatedly by Federal courts in upholding ATF's revocation of licenses. Again,

our goal is voluntary compliance, and we believe we are using our resources and the available sanctions appropriately to bring about that result.

We hope this information will assist the Subcommittee in its oversight efforts. I look forward to answering any questions the Subcommittee may have.